

Private foundation; self-dealing; loss of interest on certificates of deposit. The purchase by a private foundation from a banking institution, a disqualified person with respect to the foundation, of certificates of deposit with a maturity date one year from the date of issue and providing for a reduced rate of interest if they are not held to the maturity date is an act of self-dealing under section 4941(d)(1)(B) of the Code.

Advice has been requested whether, under the circumstances described below, the purchase of certificates of deposit by a private foundation from a banking institution that is a disqualified person with respect to the foundation is an act of self-dealing under section 4941(d)(1)(B) of the Internal Revenue Code of 1954.

The certificates of deposit purchased by the private foundation provide for interest at a specified annual rate of interest, with a maturity date one year from the date of issue. The certificates further provide for a reduced rate of interest in the event that they are not held to the full maturity date.

Section 4941(d)(1)(B) of the Code provides that the term 'self-dealing' includes the lending of money or other extension of credit between a private foundation and a disqualified person.

Section 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purposes of the foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 53.4941(d)-2(c)(4) of the Foundation Excise Tax Regulations provides that the performance of certain general banking services is an exception to the general rule prohibiting the lending of money between a private foundation and a disqualified person under section 4941(d)(1)(B) of the Code, and is within the scope of the personal services which do not constitute self-dealing transactions under section 4941(d)(2)(E).

The regulations further explain that the general banking services that are allowed are: (1) checking accounts, as long as the bank does not charge interest on any withdrawals; (2) savings accounts, as long as the foundation may withdraw its funds on no more than 30-days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit; and (3) safekeeping activities.

The certificates of deposit described above are not one of the general banking functions permitted by section 53.4941(d)-2(c)(4) of the regulations since the foundation will suffer a loss of interest if it withdraws the funds prior to the maturity date. Thus, the exception provided by this section of the regulations is inapplicable, and the purchase of certificates

of deposit is considered a lending of money by the private foundation to the disqualified person.

Accordingly, the purchase of certificates of deposit, under the circumstances described above, is an act of self-dealing under section 4941(d)(1)(B) of the Code.

Compare Rev. Rul. 73-595, 1973-2 C.B. 384, in which a private foundation's deposit of funds with a disqualified person in a savings account was held not to fall within the scope of the general banking functions permitted by section 53.4941(d)-2(c)(4) of the regulations since the deposits were subject to a loss of interest if withdrawn before the last day of a quarter.